REPORTABLE

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Writ Petition (C) No. 5822 of 2002

Date of Decision : 23-02-2007

M/S JANTA GRAMUDYOG SAMITI,DEL ..... Petitioner
Through Mr. Saurabh Prakash, Advocate.

versus

VIDYDHAR MISHRA & ORS. ..... Respondent
Through Mr. Suryakant Singla, Advocate.

CORAM:
HON'BLE MISS JUSTICE REKHA SHARMA

1. Whether the reporters of local papers may be allowed to see the judgment ? Yes.
2. To be referred to the reporter or not ? Yes
3. Whether the judgment should be reported in the `Digest?' Yes

REKHA SHARMA, J. (ORAL)

The petitioner, namely M/s Janta Gramudyog Samiti, Nangloi, Delhi, is aggrieved by the order of the Presiding Officer, Labour Court No.5, Karkardooma, Delhi, dated 01st February, 2002 passed in ID No. 605/94. The reference made to the Labour Court was to the following effect:-

> "Whether the services of Shri Vidya Dhar Mishra have been terminated illegally and/or unjustifiably and if so, to what relief is he entitled and what directions are necessary in this respect?"

The Labour Court has held that the respondent, namely, Shri Vidyadhar Mishra, was wrongly retired by the petitioner at the age of

56 years and that he was entitled to continue in service till he attained the age of 58 years. Accordingly, the petitioner was directed to pay to the respondent full back wages with all consequential benefits which he would have received had he remained in service of the management from the date of his alleged retirement at the age of 56 years i.e. 15.7.93 till he would have attained the age of 58 years i.e. 14.7.95.

The case of the petitioner is that the respondent who was working as a Manager in its organization was bound by the rules and regulations which were framed on 18th May, 1993 by the Administrator who was appointed by the Khadi Village and Industries Commissioner in the year 1988 as the petitioner's organization was not doing well financially. It appears that prior to 18th May, 1993, there was no prescribed age for the retirement of the employees working with the petitioner and as a matter of practice, they used to continue to serve the organization till the age of 60 years. However, Rule 11 of the said Order which came to govern the employees of the petitioner lays down different age of retirement for different categories of employees. The said Rule reads as under:

> "11. Period of service
>
> The age of retirement for an employee who gets salary from the organization shall be 56 years of age; for an employee who is a member of the General Body (Aam Sabha) shall be 58 years of age and for an employee who is a Trustee member (Trustee Mandal) shall be 60 years of age; and after completion of the above mentioned period the employee will be retired from service. The employee who get gratuity etc. as per applicable labour laws. Submission of birth certificate by the employee for the receipt of gratuity

> shall be compulsory. Gratuity etc. shall be paid in six months in lump sum or in equated installments. If the period exceeds this interest @ 12% shall be paid to the employee by the Samiti. The Working Committee of the Samiti/Manager shall have the right to re-appoint. An employee who at the time of retirement was a member of the Samiti shall remain a member."

It is apparent from the aforesaid Rule 11 that the age of retirement of a person who is an employee simpliciter in the petitioner's organization is fixed at 56 years while an employee who is also a member of the General Body (Aam Sabha) at 58 years and an employee who is a Trustee Member (Trustee Mandal) at 60 years. It is not disputed that the petitioner was an employee simplicitor and he was neither a member of the General Body nor a Trustee Member. The Labour Court, however, has held that the petitioner was entitled to continue in service till the age of 58 years. The order of the Labour Court does not indicate as to how it has come to the conclusion that the age of retirement of respondent in terms of Rule 11 was 58 years. The Labour Court itself has stated in its order that the respondent was not a Trustee Member and, therefore, he could not continue till the age of 60 years. The only other two categories are the categories of employee simplicitor and an employee who is a member of the General Body. The respondent placed nothing on record before the Labour Court that he was an employee who was a member of the General Body. Therefore, the Labour Court, to my mind, could not return the finding that the respondent ought to have continued in service till the age of 58 years. The finding is unwarranted and cannot be sustained.

It was argued by the learned counsel for the respondent that

even if it is assumed that the finding of the Labour Court in terms of Rule 11 is not supported by the evidence on record, the respondent still could not be retired at the age of 56 years because when he joined the service there were no rules and regulations in force and the employees were being retired at the age of 60 years as a matter of practice. According to the counsel the introduction of the rules and regulations dated 18th May, 1993 and fixing the age limit of 56 years, 58 years and 60 years tantamounts to changing the service conditions of the employees in violation of Section 9A of the Industrial Disputes Act 1947 which provides that an employer who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the 4th Schedule, shall not effect such change without giving, to the workman likely to be affected by such change, a notice in the prescribed manner of the nature of change proposed to be effected.

As against this submission, learned counsel for the petitioner has relied upon a judgment of the Supreme Court rendered in *Harmohinder Singh Vs. Kharga Canteen, Ambala Cantt. 2001-II-LLJ.* I have gone through this judgment. It says that conditions of service for change of which notice has to be given under the 4th Schedule does not in terms include the subject matter of Para 3-A, namely, the fixation of a period of service or date of retirement. It may be noticed that in the said judgment by virtue of Para 3-A maximum age limit for an employee was fixed at 60 years and maximum permissible service for an employee was fixed at 15 years. On a change made to the said condition before the Supreme Court, it was held that fixation of period

of service or date of retirement will not fall within the ambit of 4th Schedule, referred to in Section 9A of the Industrial Disputes Act.

Having regard to what has been discussed above, the writ petition is allowed. The award of the Industrial Tribunal dated 1st February, 2002 passed in ID No. 605/94 is set aside.

REKHA SHARMA, J

FEBRUARY 23, 2007
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